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standing what was wanted, sought to do materially what the plaintiffs had done. The defendant's design was to procure a similar work. The evidence shows this quite distinctly. Mr. A'Becket had not as he says, the plaintiff's work before him; but he was familiar with it and was, I think, mainly guided in what he did, by his recollection of it. The imitations, in some instances extending even to errors, seem too remarkable to be accidental. The slight, unimportant differences may well be ascribed to a desire to avoid the charge of copying. It is, I repeat, quite plain that the defendant started out with the design to publish and offer for sale, a work similar to the plaintiff's; and this similarity is carried even into the title page; which is made so like the plaintiff's, that any one purchasing might well suppose he was getting the plaintiff's work. The answer indeed admits that the defendant's publication "is substantially the same as the complainant's." Let a decree be entered for the plaintiff.

United States Circuit Court, Eastern District of Pennsylvania.

HALL v. PENNSYLVANIA RAILROAD COMPANY.

A common carrier is liable for loss of goods in his charge, from any cause, except the act of God, or of the public enemy. When he has received the goods under a bill of lading his liability continues, as at common law, except as regards losses by causes enumerated as exceptions in the bill of lading, without negligence on his part.

His duty being to transport goods without unreasonable delay, any injurious interruption of such transport, by the refusal of his servants or employees to perform their duty, would make him liable for damages.

A strike of its employees is therefore no defence to a railroad company in an action for damages for delay in transportation.

A mob is not "the public enemy," and destruction of goods by it, will not excuse the carrier, although its force was greater than he was able to resist, and although he promptly called upon the civil authorities for protection.

But where goods were accepted by a carrier under a bill of lading, by which he was not to be liable for loss by fire without negligence on his part, and the goods were stopped on their transit for two days, and then burned by a mob, it was held that negligence could not be imputed to the carrier, and the loss was within the exception of the bill of lading.

THIS suit was brought to recover from the defendant the value of certain wool, delivered to it at Chicago for transportation to Philadelphia. A jury having been waived, the case was tried by the court upon the evidence submitted by the parties. The following facts were found as established by the evidence:

1. The value of the goods in controversy was, on the 22d day of July 1877, at the point of shipment, \$18,060.38, and at the point of destination, \$20,972.97.

2. The said goods had, in course of transit from their place of shipment to their respective destinations, reached the city of Pittsburgh at least twenty-four hours before the fire occurred in said city, on July 21st and 22d 1877, and were then in defendant's custody in the cars in which they had been shipped, and the said cars and the said goods were burned in said fire.

3. The defendant, about July 19th 1877, found itself unable to maintain, against the force of a mob, entire possession and control of its own property, and the property in its custody, including that of the plaintiff, and to operate its road. It then called upon the proper authorities, including the sheriff of Allegheny county, for assistance and protection; a requisition was made by said sheriff upon the governor for the assistance of the military power of the Commonwealth. In pursuance of such requisition, troops were ordered by the governor to aid said sheriff in re-taking and re-delivering to the defendant entire possession and control of such property, and to enable it to operate its road; and in endeavoring so to do, said troops, on July 21st 1877, came into conflict with said mob and failed to dispossess the same, and immediately after said conflict and failure the property in question was destroyed by fire communicated by said mob.

4. The goods in question were received by the defendant on bills of lading, usually known as the "Red Star Union Line Fast Freight" receipts, with all and singular the conditions therein contained. This bill of lading contained conditions, *inter alia*, that the defendant should not be liable "for damage to perishable property of any kind, occasioned by delays from any cause, or by changes of weather; nor for loss or damage on any article or property whatever, by fire or other casualty, while in transit or while in depots or other places of transshipment, or at depots or landings at point of delivery; nor for loss or damage by fire, collision or the dangers of navigation while on seas, rivers, lakes or canals."

5. If the transit of the goods in question had not been interrupted at Pittsburgh and had been continued in regular course, the train containing them would have been at a considerable distance from Pittsburgh eastward before the time of the occurrence of the fire.

6. When the train containing said goods reached the depot of the defendant, in Pittsburgh, on July 19th, the hands who had conducted it there left it, and a "strike" of all the regular train hands of the defendant occurred on that day, in consequence of a refusal by the defendant to accede to their demand for an increase of wages.

7. On the 19th of July, there were standing on the track in the depot yard at Pittsburgh, a number of cars laden with petroleum, about one hundred and fifty yards distant from the cars which contained the plaintiff's goods. They were in the same relative position on the day when the fire occurred. The oil cars were kept in place by ordinary brakes. The grade of the road was descending towards the freight cars, so that the oil cars would run towards the former by their own gravity. At or before the occurrence of the fire, the oil cars were caused to move down the grade until they came in contact with the freight cars, and they were all burned up together.

8. On the 19th, 20th and 21st of July, freight trains continued to be brought into the depot yard of the defendant, at Pittsburgh, both from the east and west, in the regular course of transit, and were there stopped, so that there was an unusual accumulation of trains at that point.

Upon these facts, the plaintiff prayed the court to enter judgment for \$20,973.97 and interest, from July 22d 1877 to the day judgment should be rendered.

John Fallon, for plaintiff.

Wayne McVeagh and *Chapman Biddle*, for defendant.

The opinion of the court was delivered by

MCKENNAN, Circuit J.—The court has been requested by plaintiff to find as matters of law :

I. "That defendant's duty as a common carrier was to carry plaintiff's goods from the several points of shipment to * * * Philadelphia, the point of delivery of all, without any unusual or avoidable delay, and apart from the special conditions in the bill of lading, defendant is liable for loss from any cause, save the acts of God or a public enemy."

This proposition is affirmed.

II. "That defendant did not cease to be a common carrier by

reason of the conditions in the bill of lading, but continued subject to all liabilities of common carriers, except for losses happening for causes enumerated in said conditions, without default or negligence on the part of defendant's servants or employees, while defendant was actually discharging its duties of carrying the goods from the point of shipment in the usual and proper manner."

This is also affirmed.

III. "That the interruption of the transit by reason of the refusal of the servants of defendant, in charge of their freight trains on which plaintiff's goods were being carried to perform their duty, was a default on part of defendant."

As it was the duty of the defendant, as a common carrier, to transport the goods of the plaintiff to their point of destination, without unreasonable delay, any injurious interruption of such transportation, by the refusal of the defendant's servants to perform their duty, would be a breach of duty imputable to it; and for any loss to the plaintiff caused by such delay, the defendant would be liable in damages.

IV. "That the strike and refusal to perform duty on the part of the men does not justify or excuse the interruption of the transit of plaintiff's goods; and that defendant's election not to pay the ten per cent. additional wages demanded, and in lieu thereof to allow the goods to remain at Pittsburgh, wholly or partly in the control of persons who prevented defendant from 'operating its road' and performing its contract as a common carrier, makes defendant liable for all the consequences, including the destruction and loss of said goods during the period that the transit was thus interrupted and the plaintiff's property thus wrongfully controlled, without proof of any other negligence or misconduct on part of defendant."

I decline to affirm this proposition. The evidence does not show that the loss complained of was caused by the "strike," nor that any permissive allowance of the retention of the goods at Pittsburgh can be imputed to the defendant. On the contrary, it is admitted by the plaintiff, that the defendant was coerced by the superior power of a lawless mob, which usurped control of the train containing the plaintiff's goods and prevented the defendant from operating its road; that the defendant took prompt steps to meet the emergency by an appeal to the civil authorities for protection and assistance; that these authorities, with the military force

summoned by them were repelled; and that the train with these goods was thereupon destroyed by an incendiary fire.

While these circumstances would not protect the defendant against a failure to fulfil its obligation as a common carrier, yet I cannot say that an involuntary, technical default warrants an imputation of negligence to the defendant touching a cause of loss, which is expressly excepted from its liability.

V. "That allowing or suffering others than their own employees to take from defendant the possession or control, whether in whole or in part, of plaintiff's goods, and to use that control, not for the purpose of furthering or continuing the transit, but for the purpose of suspending and preventing it, was a default on part of defendant."

The defendant was deprived of the control of the train containing the plaintiff's goods, and was prevented from continuing their transit by a force it was unable to resist. It cannot be held responsible for the *purpose* of the mob, although the act of the mob in intercepting the transportation of the goods might subject the defendant to compensation to the plaintiff for any loss sustained by him by reason of such interrupted transit of his goods. I decline, therefore, to affirm this proposition.

VI. "That however proper it may have been for defendant to call on the public authorities for protection and assistance, 'in re-taking and re-delivering to defendant the entire' 'possession and control of said property,' such act of propriety in no way justifies the previous default in suffering the possession and control thereof to pass out of its hands."

This proposition is affirmed, with the qualification that I do not say that the defendant was in default, otherwise than as, and for the reason stated in the answer to proposition IV.

VII. "That the various risks enumerated in said conditions, which are assumed by plaintiff in relief of defendant's general liability, and more especially the risk '*of fire while in transit*,' are limited to losses occurring while the defendant is engaged in carrying the goods, in the proper discharge of its duties under its contract, and do not include loss by fire, occurring while the transit is suspended, and the goods in question have been suffered by defendant to pass into the possession and control of persons acting adversely to the duties defendant assumed to discharge."

I decline to affirm this proposition. The exception in the bill of

lading is, that the carrier shall not be liable "for loss or damage on any article or property whatever, by fire or other casualty, while in transit, or while in depots or places of transshipment." The engagement of the carrier is to assume the custody of the property intrusted to him at the point of shipment, and to deliver it at the place of destination, and the obvious intent, as well, I think, as the clear import of the exception, is to protect him against the consequences of fire during the continuance of his duty as a carrier. His qualified liability is co-extensive with his duty, and he forfeits its protection only by some fault of his own, in connection with the casualty to which the exception refers. Nor can I regard it as within the reason of the exception to hold, that it is eliminated from the contract when the property in the carrier's charge is wrested from him by a hostile force, which he is unable to resist, and it is consumed in an incendiary fire, although his exclusion from the possession and control of it may last for two days before it is thus destroyed.

VIII. "That it was gross default and negligence on part of defendant to allow freight trains to come into Pittsburgh on the 19th, 20th and 21st of July, under the circumstances."

I decline to affirm this proposition.

IX. "That it was gross default and negligence to allow cars loaded with petroleum to continue to stand on the track, under all the circumstances and manner, and for the period of time in the 8th clause of the foregoing statement of facts."

I decline to affirm this proposition, for the reasons that the petroleum cars were presumably in the usual and proper place for them in the depot yard; that they were at a safe distance from the cars containing the plaintiff's goods, and were there secured by mechanical appliances usually employed for that purpose, that they might lawfully be kept there, and that their removal into contact with the other cars was the act of the incendiary mob which had, for two days before, maintained a forcible mastery of the situation.

X. "That defendant is responsible for the misconduct and default of the persons whom it suffered to take control and possession, wholly or jointly with itself, of plaintiff's property, and to continue in such control for the space of two or three days, during the period of time while that control and possession continued, and for all loss resulting from such misconduct."

I decline to affirm this proposition.

Upon the whole case, I am of the opinion, and so find, that the

loss complained of was caused by fire while the plaintiff's goods were in transit by the defendant within the meaning of the exception in the bill of lading; that the defendant is not shown to have been guilty of any negligence by which the efficiency of the exception is, in any wise, impaired; and hence that the plaintiff is not entitled to recover.

Judgment will, therefore, be entered in favor of the defendant.

LEGAL NOTES.

The Supreme Court of the United States has recently decided several cases involving questions of great importance in constitutional law, and especially upon the scope of the 14th amendment of the Federal Constitution, and the power of Congress and of the United States Courts, under the amendment and the legislation in pursuance thereof. The cases are too long to be published in our pages in full, but as they have excited general attention we give below a rather full abstract of the principal ones.

THE FOURTEENTH AMENDMENT.—DENIAL OF CIVIL RIGHTS BY A STATE OFFICER.—HABEAS CORPUS.—*Ex parte The Commonwealth of Virginia and J. D. Coles.* Petition for a writ of habeas corpus.

The petitioner, Coles, was judge of a county court in Virginia, charged by the law of that state with the selection of jurors to serve in the circuit and county courts of his county, and in the year 1878, was indicted in the federal court for the Western District of Virginia, charged with excluding and failing to select as grand jurors and petit jurors certain citizens of his county, of African race and black color, said citizens possessing all other qualifications prescribed by law, and being excluded from the jury lists made out by him as such officer, on account of their race, color and previous condition of servitude, and for no other reason, against the peace, &c., of the United States, and against the form of the statute in such case made and provided. Being in custody, under that indictment, he presented this petition for a writ of habeas corpus and a writ of certiorari to bring up the record of the inferior court, that he might be discharged, averring that the finding of the indictment, and his arrest and imprisonment thereunder, were unwarranted by the Constitution of the United States, in violation of his rights and the rights of Virginia, whose judicial officer he was, and that the inferior court had no jurisdiction to proceed against him. A similar petition was presented by the state of Virginia. The court, STRONG, J., delivering the opinion, *held* :

1. That while a writ of habeas corpus cannot generally be made to subserve the purposes of a writ of error, yet when a prisoner is held without any lawful authority, and by an order beyond the jurisdiction of an inferior federal court to make, this court will, in favor of liberty, grant the writ, not to review the whole case but to examine the authority of the court below to act at all.